

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SIMON TERRY JEFFERY,
TDCJ #283045,

Plaintiff,

v.

RISSIE OWENS, *et al.*,

Defendants.

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CIVIL ACTION NO. H-05-3527

ORDER

In an order entered on October 19, 2005, this Court dismissed the prisoner civil rights case filed by state inmate Simon Terry Jeffery for failure to state a claim. Jeffery's notice of appeal was due thirty days from that date, or no later than Friday, November 18, 2005. *See* FED. R. APP. P. 4(a)(4)(A). The Court received Jeffery's notice of appeal on November 25, 2005, which is outside of the thirty-day time limit for perfecting an appeal. Therefore, the Fifth Circuit has remanded this case for a determination of whether Jeffery delivered his notice of appeal to prison officials on or before the November 16, 2005 deadline. (Doc. #11).

A prisoner, Jeffery proceeds *pro se* in this instance. Under the "mail-box rule" established by *Houston v. Lack*, 487 U.S. 266, 275-76 (1988), a prisoner's notice of appeal is deemed timely filed when he delivers the notice to prison officials for mailing. *See also* FED. R. APP. P. 4(c)(1). Jeffery's notice of appeal is not dated. However, the Court takes judicial notice that Jeffery's notice of appeal is accompanied by two declarations in support


of his motion to proceed on appeal *in forma pauperis*, both of which were filed on the same day as his notice of appeal. (Doc. #6, #7). Both declarations were executed on November 14, 2005. Jeffery avers in the cover letter accompanying these instruments for filing that his notice of appeal and the declarations in support of a finding of indigency “are being placed in the [prison] Unit’s ‘Mail-Box’ on this date.” (Doc. #7). That letter, like his sworn declarations, was executed on November 14, 2005. This constitutes sufficient evidence that Jeffery delivered his pleadings to prison officials for mailing, at the latest, on November 14, 2005.

A *pro se* prisoner’s notice of appeal is timely filed if deposited in the institution’s internal mail system on or before the last day for filing. *See* FED. R. APP. P. 4(c)(1). Because the record indicates that Jeffery tendered his notice of appeal for mailing no later than November 14, 2005, his notice of appeal is deemed timely under the mailbox rule.

The Clerk will provide copies of this order to the parties and shall return this case to the United States Court of Appeals for the Fifth Circuit.

The Clerk shall provide a copy of this order to the parties.

SIGNED at Houston, Texas, on **April 27, 2006.**


Nancy F. Atlas
United States District Judge